

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF PALLISA AT PALLISA
CRIMINAL CASE NO. **PAL-00-CR-C0-257-2024**
UGANDA :: PROSECUTION
VS
TUMUKUNDE RAJAB KARIM:: ACCUSED

Before: His Worship Kyembe Karim ESQ

Learned Magistrate G.I

JUDGMENT

Introduction.

The accused was arraigned in court on the 12th September, 2024 vide charge sheet dated 10th/September/2024 and sanctioned the same day of arraignment. He was charged with one count of STEALING A MOTOR VEHICLE Contrary to, formerly, Section 265, penal code Act cap 120, now, Sections 237 and 248(a) of the penal code Act cap 128, laws of Uganda, 2023 edition.

Factual background

It was the prosecution's allegation that the accused on the 1st day of April, 2024 at Katome Village in Pallisa Dstrict stole a motor vehicle, to wit; a motor cycle Reg. No. UGA 250G, Bajaj model, Red in colour valued at approximately UGX. 5,000,000/= (*Uganda shillings five million only*,) the property of a one, Wabwire Asuman.

When the charge was read to the Accused, he denied the same and a plea of NOT GUILTY was accordingly entered.

It is trite that by denying the charges, the Accused put in issue all and every essential ingredient of the offence with which he is being charged.

It is also settled law that the prosecution bears the onus to prove the ingredients beyond reasonable doubts as categorically laid out in **MILLER VS MINISTER OF PENSIONS (1947) 2 ALLER ER 372.**

The burden does not shift to the accused and the accused is only convicted on the strength of the prosecution case;- Not on the weakness of the accused's defense, as held in **SEKITOLEKO VS UGANDA (1967) EA 531.**

This court is alive to the above principles and I have also cautioned myself that the accused has no obligation to prove his innocence.

Evidence adduced:

In attempt to prove the charge, the prosecution called 4 (four) witnesses.

Prosecution first called a one, **Kijimi Kuzaima**, and his testimony was taken down as **Pw1.**

He told court that he knows the complainant who is his maternal uncle and also knows the accused, he having lived with Pw1's uncle on the same village for about 2 years and used to occasionally disappear from the village and return later, stating that he was a soldier.

That on the said day, the complainant sent him (Pw1) to pick his motor cycle Reg. No. UGA250G from his home and go with it to Katome trading center whereof he was to ferry some rice to the grinding mill and he later returned. That Pw1's father, a one, Kirya Rashid, a rice seller and chairperson of the boda boda community in pallisa town told him that the accused was in town and needed riding services, upon which, he (Pw1) was given a telephone number through which to reach out to the accused.

That on calling the said number, the accused picked and directed Pw1 to meet him at Agule road, near the hospital where they met on the road side and the accused directed Pw1 to ride him to Amazon Bar whereof the accused first joined the company of other 2 men and 2 women. That the accused, then instructed Pw1 to wait for him as he finishes his booze (local brew/malwa) and at around 1:00pm, the accused stated that he was hungry and wanted to find something to eat at plot 1 where there is another bar and restaurant. As Pw1 did not know the location, the accused enticed him into letting him (accused) to do the riding and Pw1 together with one of the women earlier found at Amazon bar sat behind.

That on reaching the said plot 1, the accused told Pw1 together with the said woman to sit down so that he (accused) could go and pick the rest of his 2 colleagues to join them. That since, Pw1's father (Kirya) is the one who had connected Pw1 to the accused, he(Pw1) trusted the accused and allowed him to ride off with the motor cycle. That at that plot 1, they (Pw1 and the woman) sat until around 6:00pm but the accused had not returned. That they made several attempts to contact the accused but he was not picking the telephone calls and the telephone was subsequently switched off, prompting them to report the matters at police. That it was

later in September, 2024 when the accused was identified transporting some girls on a different motorcycle and arrested and subsequently arraigned in court.

Pw2- Kirya Rashid gave evidence prior to the the accused linking up with Pw1 and how he connected the two men and how they subsequently identified the accused at the time of arrest.

Pw3- Wabwire Asuman gave evidence regarding ownership of the motorcycle and how it came into possession of Pw2 and subsequently, in possession of Pw1 before it was stolen. He exhibited the motorcycle registration/log book and receipts relating to the same and the same were collectively admitted as **prosecution exhibit PEX1**.

No. 41061 – D/S Akot Catherine was the investigating officer and her testimony was taken down as **Pw4** and her testimony has been duly taken note of, specifically, that upon arrest, she recorded the accused's statement and in the course of investigations, officers from Watu, a company that sells motor cycles on hire purchase was also looking for the accused, but he had misrepresented himself as Akoli not Tumukunde Rajab Karim.

On the 1st April, 2025, upon hearing the prosecution evidence, this court ruled that a prima facie case had been established and the accused placed to his defence.

This court reminded itself of the principle laid down in **Wibiro Alias Musa –VS- Republic (1960) EA 184** Whereof it was stated that:-

“this court is not even obliged at this time to find whether the evidence is worthy of too much credit or if believed, is weighty

enough to prove the case beyond reasonable doubts. That conclusion can only be made after the defence case is heard.”

All the three modes of defence were explained to the accused. That is;

1. Give evidence on oath whereby he would be subjected to cross examination.
2. Give evidence not on oath whereby he is not subject to cross examination.
3. Elect to keep silent.

The accused opted to give evidence on oath.

His testimony was taken down as **Dw1- Tumukunde Rajab Karim.**

He told court that it was 8th September, 2025 when his friend came and asked him to borrow a car from his father. That he (Dw1) could not do that and instead, his said friend settled for hiring a motor cycle and the same was to be used at a twins' party at his girlfriend's place in pallisa and the said friend told Dw1 to make arrangements. That upon reaching there, they were first received and greeted by 3 boys but later, another group of about 15 people speaking *lugwere* came complaining that they (Dw1 and company) were messing with their girls, culminating into an attack with sticks, bricks etc. and the owner of the house sheltered the accused inside while admonishing the attackers. That inside the house, Dw1 got a heart attack and fainted for one hour and that on waking up, he saw the police which helped him and took him first to the health center and subsequently, to the police cells.

That the following day, Dw1 heard people talking about a motor cycle and he identified for police the one they had been riding on on the said day they were attacked and the same was handed back to the owner while Dw1 was brought to court. That it is at court that they are calling him Tumukunde but his real name is Akol Karim.

THE LAW AND EVALUATION OF EVIDENCE

The offence of Stealing a motor vehicle is created under **Section 261 and 265 (a) of The Penal Code Act**. The prosecution had to prove each of the following essential ingredients beyond reasonable doubt;

1. The motor vehicle in issue belonged to or was in possession of the complainant.
2. The motor vehicle was intentionally taken wrongfully or without a claim of right.
3. With the intention to permanently deprive the owner of the motor vehicle.
4. The accused took or participated in taking the motor vehicle.

The above were discussed in detail by Justice Steven Mubiru in **UGANDA VERSUS OMONA FRANK CRIMINAL APPEAL NO. 15 OF 2018**.

A motor vehicle is a self-propelled vehicle that runs on land surface and not on rails. It is a mechanically propelled vehicle made, intended or adapted for use on roads. **SECTION 2 (1) (OO) OF THE TRAFFIC AND ROAD SAFETY ACT, CAP 361**, defines “motor vehicle” as any self-propelled vehicle intended or adapted for use on the roads.

Possession within the meaning of this section refers to effective, physical or manual control, or occupation, evidenced by some outward act, sometimes called de facto possession or detention as distinct from a legal right to possession.

The legal position in Uganda, as stated by the Supreme Court in **Sula Kasiira vs Uganda S.C. Crim. Appeal No. 20 of 1993**, regarding what the crime of theft is, stands as follows:-

“There must be what amounts in law to an asportation (that is carrying away) of the goods of the complainant without his consent... The removal, however short the distance maybe, from one position to another upon the owner’s premises is sufficient asportation...”

Ingredient 1:

The motor vehicle in issue belonged to or was in possession of the complainant.

Through Pw1, and PW2, prosecution led evidence to show that the subject motor cycle was first in custody of Pw2 who allowed Pw1 to go and attend to the accused rendering him riding services.

In his testimony in chief, Pw1 testified that:

“...on the said day, the complainant sent me to pick his motor cycle Reg. No. UGA250G from his home and go with it to Katome trading center whereof I was to ferry some rice to the grinding mill and I later returned. My father, a one, Kirya Rashid, a rice seller and chairperson of the boda boda community in pallisa town later told me that the accused was

in town and needed riding services, upon which, I was given a telephone number through which to reach out to the accused...”

I did not find evidence contradicting the above and neither was it discredited in cross examination. On the strength of that evidence, I am satisfied that the alleged stolen bicycle was originally in the possession of Pw2 who later authorized Pw1 to use the same and I find as a matter of fact that at the material time when it was allegedly stolen, the motor cycle was in custody of Pw1.

This ingredient was proven by the prosecution beyond reasonable doubts.

Ingredient 2:

whether the motor cycle was intentionally and wrongfully taken or without a claim of right.

The prosecution had to prove what amounts in law to an asportation (*that is taking away*) the motorcycle from possession of the complainant (pw2), without the complainant’s consent or any claim of right.

The offence of theft is committed when the vehicle is taken by a person not having lawful access. **Section 254 (1) of The Penal Code Act**, defines theft as “fraudulently and without claim of right [taking]

Prosecution exhibited PEX1- the documents of title of the impugned motor cycle reg. UGA250G. There is no doubt left in my mind that there existed a motor cycle, the particulars of which are set out in PEX1 and that the same has since been taken from the custody of Pw1 & Pw2 and

that, clearly, who ever took the said motor cycle has never returned the same to date.

Pw1 testified that:

“...on reaching the said plot 1, the accused told me, together with the said woman to sit down so that he (accused) could go and pick the rest of his 2 colleagues to join us. Since, my father (Kiryia) is the one who had connected me to the accused, I trusted the accused and allowed him to ride off with the motor cycle...”

“...I together with the woman sat until around 6:00pm but the accused had not returned. We made several attempts to contact the accused but he was not picking the telephone calls and the telephone was subsequently switched off, prompting us to report the matters at police...”

I note that the motor cycle was taken out of the custody of Pw1 under false pretenses and hence, intentionally and wrongfully. Whoever took the motor cycle relied on the trust Pw1 had because of the referral from Pw2. One might say, it was naïve of Pw1 to develop such trust, but it is evident that he relied upon the same resulting into parting with possession of the motor cycle.

As Pw1 was dispossessed of the motor cycle through lies, misrepresentations and false pretenses, I am satisfied with the prosecution evidence, especially of Pw1 to the effect that whoever took the said motor cycle did so intentionally and wrongfully taken or without a claim of right.

For those reasons, it is my finding that this ingredient was proved by the prosecution beyond reasonable doubts.

Ingredient 3:

anything capable of being stolen." Theft involves an unauthorised taking, keeping, or using of another's property.

It is committed by a person who has no lawful justification in taking possession of the property in issue.

The evidence before me shows that the subject matter was a motor cycle. There is no doubt in my mind that a motor cycle, by its nature is asportable and cable of being stolen. And as it has never been recovered, this court is safe to presume that it indeed was stolen. Prosecution proved this ingredient to the satisfaction of court.

Stealing of a vehicle has a wider scope than the offence theft, in that stealing can also be committed by conversion. The offence is committed when the vehicle is taken by persons not having lawful access, or converted by one who had lawful access. For conversion to amount to stealing, it must be done with one of the fraudulent intents under **Section 254 (2) of The Penal Code Act.**

As I have already resolved in ingredients above, I am satisfied that the allegedly stolen motor cycle was in the possession of Pw1 until he parted with possession thereof to someone who misrepresented that he was going to collect other people to join them for a meal but later did not return the same.

Pw1 testified that:

“...the accused told me, together with the said woman to sit down so that he (accused) could go and pick the rest of his 2 colleagues to join us. Since, my father (Kiryia) is the one who had connected me to the accused, I trusted the accused and allowed him to ride off with the motor cycle...”

For those reasons, I am satisfied that the allegedly stolen motor cycle was capable of being stolen and this ingredient was proved beyond reasonable doubts by the prosecution.

Ingredient 4:

With the intention to permanently deprive the owner of the motor vehicle.

The evidence before this court, that is, testimony of PW1, PW2 and PW3 shows that the motor cycle has never been recovered. I am satisfied that the prosecution discharged the burden of proof on this ingredient as well.

Ingredient 5: Participation of the accused.

Whereas an accused is entitled to certain defences, for example, honest claim, of right under **Section 7** of the Penal Code Act, Mistake of fact under **Section 9** and compulsion under **Section 15** of the PCA, amongst others, the accused in this case raised the defence of general denial.

Testifying in his defence as Dw1, he told court that:

“...another group of about 15 people speaking lugwere came complaining that we were messing with their girls, culminating

into an attack with sticks, bricks etc and the owner of the house sheltered me inside while admonishing the attackers. While inside the house, I got a heart attack and fainted for one hour and on waking up, I saw the police which helped me and took me first to the health center and subsequently, to the police cells...”

My interpretation of that testimony is that the accused denies being present at the crime scene and also denies stealing the motor cycle.

In **UGANDA V WANYAMA STEVEN CRIMINAL SESSION CASE NO 0405/2015**, court held that court must find before deciding upon conviction that the exculpatory facts are incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt.

The circumstances must be such as to produce moral certainty to the exclusion of any reasonable doubt. It is necessary before drawing the inferences of the accused’s responsibility for the offence from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference as held in **Shubadin Merali & Anor Vs Uganda (1963) EA 647**.

In the same **UGANDA VS WANYAMA STEVEN supra**, Hon. Justice Steven Mubiru held that for the prosecution to secure a conviction there must be credible and direct circumstantial evidence placing the accused at the scene of crime as an active participant in the commission of the offence.

In **UGANDA V WANYAMA STEVEN** supra, court further held that:

“ in a case depending exclusively on circumstantial evidence, the court must find before deciding upon conviction that the exculpatory facts are incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt.”

*“The circumstances must be such as to produce moral certainty to the exclusion of any reasonable doubt. It is necessary before drawing the inferences of the accused’s responsibility for the offence from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference as held in **SHUBADIN MERALI & ANOR VS UGANDA (1963) EA 647.**”*

I listened to the evidence of both prosecution and the defence. The prosecution evidence is that the accused was linked to Pw1 by Pw2 to render him riding services. Pw1 knows the accused very well, he having been on the same village and seeing the accused live with the maternal uncle for almost 2 years.

Pw1 testified that:

“...I know the complainant who is my maternal uncle and I also know the accused, he having lived with my uncle on the same village for about 2 years and used to occasionally disappear from the village and return later, stating that he was a soldier...”

I find that the accused was properly identified by both Pw1 and Pw2. I did not see any reason to doubt the credibility of their testimony. Neither

was it controverted with other evidence. The demeanor of the accused also left a lot to be desired. Evidently, he goes by different names and he is not bothered to rectify or clarify the same to the unsuspecting members of the public. That is usually indicative of a dishonest person. That said, this court is satisfied with the prosecution evidence identifying the accused and this ingredient has been proven beyond reasonable doubts.

Having proven all ingredients beyond reasonable doubts, the net effect is that;

1. I find the Accused GUILTY of the offence of stealing a vehicle as charged and I accordingly CONVICT him.
2. The accused, now convict shall be held on remand until hearing on allocutus and subsequent sentencing.
3. I order the accused, now convict to pay UGX. 4,000,000/= to the complainant in restitution of the stolen motor cycle 6 months after his release.

I so order.

Dated at PALLISA this _____1st_____ day of _____July_____ 2025.



HIS WORSHIP KYEMBE KARIM

MAGISTRATE GRADE 1